

GENERAL ORDER NO. 43

PROCEDURES -- EXECUTION SCHEDULED WITHIN SEVEN DAYS

I. PURPOSE

The purpose of this General Order is to ensure prompt, orderly processing of death penalty-related cases and requests for stays filed when an execution is imminent. To this end, it allocates and centralizes responsibility for making the initial decisions required for proper filing and assignment of these cases. It also provides that these decisions shall conform to existing local rules, general orders and the Assignment Plan, except as specifically otherwise noted in this order.

II. PROCEDURES

A. Application

The procedures set forth in this General Order shall be in effect during the seven days preceding a scheduled execution of any California state inmate under sentence of death. While they are in effect, the procedures apply to filings by or on behalf of that inmate.

B. Duties of the Clerk of Court

1. The Clerk shall at all times maintain a record of all filings in this Court by California inmates sentenced to death that seek *habeas corpus* or civil rights relief from the execution of the sentence of death, showing the name of the petitioner, the date of each filing and the Judge to whom the cases are assigned.

2. When an execution is scheduled, the Clerk shall determine whether the condemned inmate has previously filed an action that seeks *habeas corpus* or civil rights relief from the execution of the sentence of death in this or any other district court in California. If so, the Clerk shall assist the San Francisco General Duty Judge ("the General Duty Judge") in making arrangements so that the Judge assigned the prior case will be immediately available to decide any emergency stay requests based on any new filing that may be assigned or transferred to that Judge pursuant to this General Order.

3. The San Francisco Office of the Clerk of Court shall remain open for telephone and filing access, on an emergency basis, after the close of normal business hours on the last court day before a scheduled execution, until notice is received that: the execution has gone forward; or, the execution is stayed and all applications to vacate the stay have been denied; or, the execution warrant has expired.

4. During the time described in B.3. above, the Clerk shall designate a person or persons to receive the filings on an emergency basis and make the required telephone calls, and a person or persons to serve as messenger to deliver papers to and from the General Duty Judge, the assigned Judge, and the Court of Appeals. The Clerk shall maintain 24-hour telephone and facsimile numbers for: the Judge assigned to any previous action that seeks *habeas corpus* or civil rights relief from the execution of the sentence of death filed by the inmate whose execution is scheduled, the Office of the Clerk and Motions Panel of the Ninth Circuit Court of Appeals, the Warden of San Quentin Prison and the United States Supreme Court staff attorney responsible for coordinating emergency applications in capital cases.

5. Immediately upon receipt of papers presented for filing that request a stay of execution the Clerk shall deliver the papers to the General Duty Judge, and shall notify the Judge assigned to that inmate's previous related filings, if any.

6. If the General Duty Judge is unavailable within one hour after the Clerk attempts to contact him or her, or not available immediately if the execution is scheduled within the hour, the Clerk shall contact the Chief Judge immediately for designation of a Duty Judge. If the Chief Judge is not available, the Clerk shall call each active judge of the court in order of seniority, and then each senior judge, until an available Judge is located. That Judge will act as General Duty Judge for the purposes of this order.

C. Duties of the General Duty Judge

1. During the seven days preceding a scheduled execution, the General Duty Judge shall be immediately available during normal business hours. After the close of normal business hours on the last court day before a scheduled execution, the General Duty Judge shall be in the Bay Area and immediately available by telephone until notice is received that: the execution has gone forward; or, the execution is stayed and all applications to vacate the stay have been denied; or, the execution warrant has expired. The Clerk shall provide a cellular telephone and facsimile machine, if needed, to the General Duty Judge.

2. The General Duty Judge shall act as the decision-maker in applying the rules and procedures of the court. Before the inmate's papers requesting a stay of execution are filed, the General Duty Judge shall decide, among other things, whether the inmate has previously filed in this court an action that seeks *habeas corpus* or civil rights relief from the execution of the sentence of death, and whether the inmate has previously sought *habeas* relief in another district court. The General Duty Judge shall then instruct the Clerk how the case shall be assigned, in accordance with subsection C.3. below.

3. Local court rules and the Assignment Plan shall apply to the assignment of all cases where an emergency stay of execution is requested, except as set forth in this order.

- a. If the inmate has previously filed in this court an action that seeks *habeas corpus* relief from the conviction and sentence of death, the new filing shall be assigned to the Judge assigned to the prior petition. If the inmate has not previously filed in this court a *habeas corpus* petition seeking relief from the conviction and sentence of death but has previously filed an action that seeks civil rights relief from the execution of the sentence of death, the case shall be assigned to the Judge assigned to the prior civil rights proceeding.
- b. If the inmate has previously sought habeas corpus relief from the conviction and sentence of death in another district court, the General Duty Judge shall transfer any new *habeas* filing seeking such relief to that district court. The Clerk shall assign any such case a miscellaneous case number and immediately transmit a copy of the transfer order by facsimile to the other district.
- c. If the case is not assigned or transferred pursuant to C.3.a. or b. above, or if the Judge of this Court who had the prior case or petition is no longer sitting or has taken senior status and elected not to hear death-penalty-related cases, the Clerk shall assign the case randomly either from the Capital *Habeas Corpus* category if it falls within that category (see footnote 1 to General Order 44) or from the Prisoner Petitions case category. Consistent with General Order 44, Sec. O.2.c., cases assigned pursuant to this subparagraph may not be assigned to a newly-appointed judge until after that judge has received his or her first capital *habeas corpus* assignment.
- d. If an inmate files a Notice of Related Case seeking to relate the newly filed case to another case not filed by that inmate, the procedures of Local Rule 3-12(e) shall be followed, except that the Notice of Related Case shall be submitted immediately to the Judge assigned to the earliest filed case, without waiting for support or opposition. If the Clerk cannot contact that Judge to obtain an immediate ruling on the related case request within one hour of the filing of the Notice of Related Case, or immediately if the execution is scheduled within the hour, the request to relate the cases shall be deemed denied without prejudice.

e. Notwithstanding the above, the General Duty Judge shall have the power to assign any patently frivolous execution-related filing by or on behalf of the prisoner to himself or herself as a miscellaneous filing, and to dismiss such filing summarily as provided by law.

4. The Clerk shall attempt to reach the Judge to whom the case should be assigned pursuant to C.3. a., c. or d. above. If the Clerk cannot contact that Judge within one hour of the filing of the request for the stay of execution, or immediately if the execution is scheduled within the hour, the General Duty Judge shall decide the request for the stay.
5. The regularly assigned General Duty Judge and Chief Judge may transfer the duties of the General Duty Judge to another Judge of the Court.

ADOPTED BY THE COURT: FEBRUARY 20, 1996

AMENDED: JULY 18, 2000

FOR THE COURT:

MARILYN HALL PATEL
Chief Judge